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The Treaty of Peace (Germany) Order 1920

P.C. 755—1920

AS AMENDED BY P.C. 879—1920

APRIL 14, 1920

Address all correspondence to

THE CLEARING OFFICE,
DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA.

OTTAWA
J. DE LABROQUERIE TACHÉ
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1920

AT THE GOVERNMENT HOUSE AT OTTAWA,

WEDNESDAY, the 14th day of April, 1920.

PRESENT:

HIS EXCELLENCY THE ADMINISTRATOR IN COUNCIL.

Whereas at Versailles on the 20th of June, 1919, a Treaty of Peace (including a Protocol annexed thereto) between the Allied and Associated Powers and Germany (hereinafter referred to as "the Treaty") was signed on behalf of His Majesty, acting for Canada by the plenipotentiaries therein named;

And whereas by the Treaties of Peace Act, 1919, it was provided that the Governor in Council might make such appointments, establish such offices, make such Orders in Council, and do such things as might appear to him to be necessary for carrying out the Treaty, and for giving effect to any of the provisions of the Treaty, and that any Order in Council made under that Act might provide for the imposition by summary process or otherwise of penalties in respect of breaches of the provisions thereof, and that any expense incurred in carrying out the Treaty should be defrayed out of the moneys provided by Parliament;

And whereas it is necessary for carrying out and for giving effect to certain sections of the Treaty and for performing the obligations of Canada arising thereunder that the provisions hereinafter contained should have effect;

Now therefore the Administrator in Council, on the recommendation of the Secretary of State, is pleased to order, and it is hereby ordered as follows:—

1. This Order may be cited as "The Treaty of Peace (Germany) Order, 1920."

2. In this Order—

(a) "The Custodian" means, in respect of the time prior to the date of this Order, the Minister of Finance and Receiver General, and from the date of this Order means the Secretary of State of Canada, who shall be the successor as Custodian of the Minister of Finance and Receiver General, and to whom all property, rights and interests heretofore vested in the Custodian are hereby transferred;

- (b) "Before the war" means before six o'clock (eastern standard time) in the afternoon of the fourth day of August, 1914;
- (c) "During the war" means at any time between six o'clock (eastern standard time) in the afternoon of the fourth day of August, 1914, and midnight (eastern standard time) of the tenth-eleventh day of January, 1920;
- (d) "National" or "subject" includes a corporation.
- (2) The Interpretation Act (R.S.C. Chapter 1) shall apply to the interpretation of this Order.

PART I.

DEBTS AND CLEARING OFFICE.

3. In this Part,—

(1) “Enemy debt” means—

(a) A debt payable before the war and due to or by a British subject residing in Canada by or to a German national residing in Germany;

(b) A debt which became payable during the war

(i) to a British subject residing in Canada which arose out of a transaction or contract with a German national residing in Germany, or

(ii) to a German national residing in Germany, which arose out of a transaction or contract with a British subject residing in Canada,

of which transaction or contract the total or partial execution was suspended on account of the declaration of war;

(c) Interest accrued due or capital sums which became payable before and during the war

(i) to a British subject residing in Canada in respect of securities issued by Germany or any component State of Germany, or

(ii) to a German national residing in Germany in respect of securities issued by Canada or any Province of Canada; provided that the payment of interest on such securities or payment of such capital sums, in the first case to British subjects, or in the second case to German nationals, or in either case to neutrals, has not been suspended during the war:

(2) “Debtor” means a person from whom, and “creditor” a person by whom, an enemy debt is claimed.

4. There is hereby established in and for Canada, under the control and management of the Custodian, a Local Clearing Office (hereinafter referred to as “the Clearing Office”) which shall perform all the functions of a Central Clearing Office for Canada as hereinafter provided, and shall conduct all transactions with the German Clearing Office through a Central Clearing Office (hereinafter referred to as “the Central Clearing Office”) established in the United Kingdom.

(2) There shall be attached to the Clearing Office such officers, clerks and advisers as the Custodian may select, and there shall be paid to such officers and servants such remuneration as the Governor in Council may determine.

5. Except in cases where recovery of such debt in a Court of law is allowed as hereinafter provided, no person shall pay, or accept payment of, or have any communication with any German national with respect to any enemy debt, otherwise than through the Clearing Office.

(2) Any person who violates any of the provisions of subsection (1) shall on summary conviction be liable to imprisonment with or without hard labour for a term not exceeding twelve months, or to a fine not exceeding two thousand dollars, or to both, or on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand dollars, or to both.

6. No person shall bring or take in any Court in Canada any action or other proceeding relating to the payment of an enemy debt, except as hereinafter provided.

7. Every creditor in Canada, unless he has already recorded his claim with the Custodian, shall within six months from the date of this Order notify the Clearing Office of his claim, and thereafter from time to time shall within one month of demand by the Clearing Office furnish to the Clearing Office such further information and documents in his possession or power, in such form and verified in such manner, as the Clearing Office may require.

(2) The claim of any person who fails to comply with any provision of subsection (1) shall, if the Custodian so orders, be forever barred and extinguished, and such person shall on summary conviction be liable to a penalty not exceeding fifty dollars for each day of default.

8. The Clearing Office shall notify the German Clearing Office (through the Central Clearing Office) of all enemy debts of which the Custodian or the Clearing Office has received notice from creditors in Canada.

9. If the German Clearing Office credits the Clearing Office (through the Central Clearing Office) with the whole or part of any such debt, the Clearing Office, upon receiving notice of such credit, shall, subject to section 12, pay ~~the amount so credited~~ to the creditor. *the amounts so credited retained, by Clearing risks, by Commission*

10. Every debtor in Canada who admits the whole or part of the debt shall within three months from the date of this Order, unless he has already done so, pay to the Custodian the amount admitted with the interest and in the currency and at the rate of exchange provided by sections 23 and 24 of this Order.

11. When the Clearing Office receives (through the Central Clearing Office) notice from the German Clearing Office of a claim against a debtor in Canada for an enemy debt, the following provisions shall apply:—

(a) If any sum has been paid to the Custodian in respect of such debt, the Clearing Office shall at once credit the German Clearing Office with the amount so paid, with interest at the rate provided by section 23 from the date of its receipt by the

Custodian, and notify the German Clearing Office (through the Central Clearing Office) of such credit;

(b) If no sum has been so paid to the Custodian, or if the sum so paid and credited as aforesaid is less than the amount due, the Clearing Office shall give notice of the claim to the debtor;

(c) If the debtor admits the whole or part of the claim, he shall within one month from the receipt of such notice notify the Clearing Office of the amount admitted and pay such amount to the Custodian with the interest and in the currency and at the rate of exchange provided by Sections 23 and 24;

(d) The Clearing Office shall, subject to section 12, credit to the German Clearing Office the amount admitted by the debtor, with the interest and in the currency and at the rate of exchange provided by Sections 23 and 24, whether or not the debtor has paid such amount to the Clearing Office, and shall notify the German Clearing Office (through the Central Clearing Office) of such credit; provided, however, that an admitted debt owing by a debtor in Canada who has suffered injury from acts of war shall only be credited to the German Clearing Office when the compensation due to such debtor in respect of such injury has been paid;

(e) If the debtor disputes the whole or part of the claim, he shall within one month from the receipt of the notice mentioned in paragraph (b) furnish to the Clearing Office a statement upon oath of the grounds of dispute, together with copies verified upon oath of all relevant documents in his possession or power, and shall thereafter from time to time furnish to the Clearing Office such further information and documents in his possession or power in such form and verified in such manner as the Clearing Office may require;

(f) If the debtor does not within the said period of one month furnish to the Clearing Office any statement of dispute as provided by paragraph (e) he shall be deemed to have admitted the claim in full, and if he furnishes such a statement as to part only of the claim he shall be deemed to have admitted the remainder;

(g) The Clearing Office shall notify the German Clearing Office (through the Central Clearing Office) of any dispute by the debtor or otherwise and of the grounds thereof.

*any amount
the Central
Office to cover
uses or*

12. The obligations of the Clearing Office under section 9 and under paragraph (d) of section 11 shall not arise where immediately before the war the debt was barred by the laws of prescription in force in the country of the debtor, or where the debtor was at that time in a state of bankruptcy or failure or had given formal indication of insolvency, or where the debt was one by a company whose business has been liquidated under emergency legislation during the war, but in such

cases the procedure specified by this Part shall apply to payment of the dividends.

(2) In this section the expression "formal indication of insolvency" bears the same meaning as it has in English law, and the terms "bankruptcy" and "failure" refer to the application of legislation providing for such juridical conditions in that part of Germany or that Province of Canada in which the debtor resided.

13. An enemy debt claimed from a debtor in Canada shall be deemed to be admitted in full by the Clearing Office and shall be credited forthwith to the German Clearing Office unless within three months from the receipt of notice thereof from the German Clearing Office, or within such longer time as may be agreed to by the German Clearing Office, the Clearing Office has notified the German Clearing Office that it is not admitted.

14. When the Clearing Office has given to or received from the German Clearing Office notice that the whole or part of an enemy debt is not admitted, it shall (through the Central Clearing Office) examine into the matter jointly with the German Clearing Office and shall endeavour to bring the debtor and creditor to an agreement.

15. If the Clearing Office agrees (through the Central Clearing Office) with the German Clearing Office upon the amount payable in respect of an enemy debt, the amount so agreed upon shall be deemed as between the Custodian or the Clearing Office and any debtor or creditor in Canada to be and to be admitted by such debtor or creditor to be the amount payable in respect of such debt, unless either such debtor or such creditor within such time as may be limited by the Custodian resorts to arbitration or to the Mixed Arbitral Tribunal or to the Courts as hereinafter provided.

16. Where the Clearing Office and the German Clearing Office are unable to agree whether an enemy debt claimed is due, or in case of a difference between a debtor and a creditor or between the said Clearing Offices, the dispute shall either be referred to arbitration if the debtor and the creditor so agree under conditions fixed by agreement between them, or referred to the Mixed Arbitral Tribunal provided for by section VI of Part X of the Treaty; provided, however, that at the request of the Clearing Office of the country of the creditor the dispute may be submitted to the Courts of the place of domicile of the debtor.

17. When any debtor or creditor in Canada resorts to the Mixed Arbitral Tribunal, such deposits may be required, fees charged and deductions made by the Clearing Office as are authorized by the Treaty. Such deposits, fees and deductions and any sum awarded by the mixed Arbitral Tribunal in respect of the expenses of the proceedings shall be dealt with by the Clearing Office in accordance with the Treaty.

18. For the purpose of enforcing the attendance of witnesses and the production of documents before the Mixed Arbitral Tribunal, whether sitting within or without His Majesty's Dominions, the Clearing Office shall have power to issue Orders which shall have the like effect as if the

proceedings were proceedings in the Exchequer Court of Canada and the Order were a formal process issued by that Court in the exercise of its jurisdiction, and shall be enforceable by that Court accordingly, and disobedience to any such Order shall be punishable as contempt of that Court.

19. All decisions of the Mixed Arbitral Tribunal, if within the jurisdiction of that Tribunal, shall be final and conclusive and binding on all Courts and on all British subjects residing in Canada.

20. Sums found to be due by the Mixed Arbitral Tribunal or by a Court or by arbitration as herein or in the Treaty provided shall be treated by the Clearing Office as if they were debts admitted by the clearing office of the country of the debtor.

21. Any creditor having recorded with the Custodian or notified the Clearing Office of any enemy debt which is not admitted in whole or in part, and any debtor having unduly refused to admit the whole or part of any debt shall pay to the Clearing Office, by way of fine, in addition to the interest provided for by section 23, interest at the rate of 5 per centum per annum on the part not admitted or on the amount with regard to which his refusal is disallowed, as the case may be.

(2) Such interest shall run from the expiration of the three months mentioned in section 13 until the date on which the claim shall be disallowed or the debt paid.

(3) The Clearing Office shall credit to the German Clearing Office any such fine payable by any person in Canada, whether such person pays such fine or not.

(4) The Clearing Office shall retain and apply towards the cost of carrying out the provisions of this Order any such fine credited to it by the German Clearing Office.

22. Any person who collusively gives notice of or admits any enemy debt which is not due, or furnishes any false information with respect to any enemy debt, shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both.

23. Enemy debts shall carry interest in accordance with the following provisions:—

(a) The rate of interest shall be five per centum per annum except in cases where, by contract, law or custom, the creditor is entitled to payment of interest at a different rate. In such cases the rate to which the creditor is entitled shall prevail.

(b) Interest shall run from midnight of the fourth-fifth day of August, 1914 (or if the sum of money to be recovered fell due after that date, then from the date at which it fell due), until the sum is credited to the clearing office of the creditor.

(c) Interest shall not be payable on sums of money due by way of dividends, interest or other periodical payments which themselves represent interest on capital.

24. Enemy debts shall be paid by and to the Clearing Office and credited by the Clearing Office to the German Clearing Office in Canadian currency.

(2) Any enemy debt which is payable by contract, law or custom in German currency shall be so paid and credited in Canadian currency at the rate of 4.1901 marks to one dollar.

(3) Any enemy debt which is payable by contract, law or custom in any currency other than German or Canadian shall be so paid and credited in Canadian currency at the rate of exchange current at the date of payment.

(4) If the contract between the debtor and the creditor provides for a fixed rate of exchange governing the conversion of the currency in which the enemy debt is stated into Canadian currency, then neither sub-section (2) nor (3) shall apply.

25. The Clearing Office (through the Central Clearing Office) shall strike a balance with the German Clearing Office on the last day of each month after the first notice of claims shall have been received from the German Clearing Office. Any credit balances in favour of the German Clearing Office shall be dealt with in accordance with Part II of this Order.

26. All sums which under this Part ought to be paid to the Custodian shall be recoverable by the Custodian in the Exchequer Court of Canada, and any sum admitted by a debtor or found due by the Mixed Arbitral Tribunal or by a Court or by arbitration as herein or in the Treaty provided may be certified by the Custodian, and on production to the proper officer of the Exchequer Court of Canada the certificate shall be registered by that officer, and shall from the date of such registration be of the same force and effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in that Court for the recovery of a debt of the amount specified in the certificate and entered upon the date of such registration, and all reasonable costs and charges attendant upon the registration of such certificate shall be recoverable in like manner as if they were part of such judgment.

27. Any payment by or on behalf of a debtor heretofore or hereafter made to the Custodian shall be to the extent of the payment discharge the debtor from all obligations and liabilities to the creditor or to the Custodian or Clearing Office in respect of the debt, and interest shall cease to run against the debtor in favour of the creditor or of the Custodian or Clearing Office on the amount so paid from the date of its receipt by the Custodian.

(2) The Custodian shall have power to execute and deliver any document necessary or proper as evidence of such discharge and to deliver up to the person making such payment any note, bond or other evidence of or any security for the debt which may be in the possession of the Custodian.

28. In any case where the Clearing Office declines to notify to the German Clearing Office a claim of which it has received notice from a

creditor in Canada, or to take any step provided for in this Part intended to make effective in whole or in part a request from a creditor in Canada of which it has received due notice, the creditor shall be entitled to receive from the Clearing Office a certificate setting out the amount of the claim, and shall then be entitled to prosecute the claim before the Courts or to take such other proceedings as may be open to him, and any German national who has obtained such a certificate from the German Clearing Office shall have the like rights.

29. Where by decision of the Clearing Office and the German Clearing Office, or of the Mixed Arbitral Tribunal, a claim by a creditor in Canada is held not to fall within this Order, the claimant shall be at liberty to prosecute the claim before the Courts or to take such other proceedings as may be open to him.

30. The Clearing office shall be deemed to be a Department of the Government of Canada, and the Custodian to be the head of such Department, for the purposes of the Canada Evidence Act.

31. If His Majesty so agrees with any of the Powers allied or associated with Him during the war, the provisions of this Part shall apply to debts due to or from nationals of that Power residing in Canada in like manner as to debts due to or from British subjects so residing.

PART II.

PROPERTY, RIGHTS AND INTERESTS.

32. In this Part

(1) "Enemy" means

(a) A German national who during the war resided or carried on business within the territory of a Power at war with His Majesty;

(b) A German national who during the war resided or carried on business within the territory of a Power which remained continuously neutral throughout the war, and with whom trading or dealing was prohibited during the war by any Statute, Proclamation or Order in Council in force in Canada;

(c) A German national who during the war resided or carried on business within the territory of a Power allied or associated with His Majesty, and

(i) whose property within such territory has been treated by that Power as enemy property, or

(ii) who has since the fourth day of August, 1914, been deported from the territory of that Power;

(d) A German national who since the fourth day of August, 1914, has been deported from Canada;

(e) Any other German national who is declared by the Governor in Council to be an enemy;

(f) A Company controlled by any of the persons mentioned in paragraphs (a), (b), (c), (d), and (e);

provided that a German national who has acquired ipso facto in accordance with the provisions of the Treaty the nationality of a Power allied or associated during the war with His Majesty shall not be considered as a German national within the meaning of this Part.

(2) "Property, rights and interests" include debts, credits and accounts, to which the provisions of this Part shall apply subject to the provisions of Part 1 which regulate the method of payment.

33. All property, rights and interests in Canada belonging on the tenth day of January, 1920, to enemies, or theretofore belonging to enemies and in the possession or control of the Custodian at the date of this Order shall belong to Canada and are hereby vested in the Custodian.

(2) Notwithstanding anything in any order heretofore made vesting in the Custodian any property, right or interest formerly belonging to an enemy such property, right or interest shall belong to Canada and the Custodian shall hold the same on the same terms and with the same powers

and duties in respect thereof as the property, rights and interests vested in him by this Order.

34. All vesting orders and all orders for the winding up of businesses or companies, and all other orders, directions, decisions, and instructions of any Court in Canada or any Department of the Government of Canada made or given or purporting to be made or given in pursuance of the Consolidated Orders respecting Trading with the Enemy, 1916, or in pursuance of any other Canadian war legislation with regard to the property, rights and interests of enemies, and all actions taken with regard to any property, business or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision or winding up, the sale or management of property, rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever in pursuance of any such order, direction, decision, or instruction, and in general all exceptional war measures or measures of transfer or acts done or to be done in the execution of any such measures are hereby validated and confirmed and shall be considered as final and binding upon all persons, subject to the provisions of Sections 33 and 41.

(2) The interests of all persons shall be regarded as having been effectively dealt with by any such order, direction, decision or instruction dealing with property, rights or interests in which they may be interested, whether or not their interests are specifically mentioned therein.

(3) No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision or instruction.

(4) The provisions of this section shall not be held to prejudice any title to property heretofore acquired in good faith and for value and in accordance with the Canadian law by a British subject or by a national of any of the Powers allied or associated during the war with His Majesty.

35. No claim or action shall be made or brought against His Majesty or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of Canada by Germany or by any German national wherever resident in respect of any act or omission during the war or in preparation for the war with regard to the property, rights or interests of any German national, and no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, measures of transfer or other laws or regulations of Canada.

(2) In the last preceding section and in this section the expression "exceptional war measures" include measures of all kinds, legislative, administrative, judicial or others, that have been taken or may be taken hereafter with regard to the property of enemies, and which had or may have the effect of removing from the proprietors the power of disposition over their property, though without effecting the ownership, such as measures of supervision and compulsory administration, and of sequestration, or measures which have had or may have as an object the seizure of,

the use of, or the interference with assets of enemies, for whatsoever motive, under whatsoever form, or in whatsoever place; "measures of transfer" are those which have affected the ownership of any property of an enemy by transferring it in whole or in part to a person other than such enemy, and without his consent, such as measures directing the sale, liquidation or devolution of ownership in enemy property, or the cancelling of titles or securities; and acts in the execution of these measures include all detentions, instructions, orders or decrees of Government departments or Courts applying these measures to the property of enemies, as well as acts performed by any person connected with the administration or supervision of the property of enemies, such as the payment of debts, the collecting of credits, the payment of any costs, charges or expenses, or the collecting of fees.

36. Every person who holds or manages any property, right or interest vested in the Custodian by this Part shall within three months from the date of this Order, unless he has already done so, give notice of the fact to the Custodian, and thereafter shall furnish to the Custodian all such further information and documents in his possession or power, in such form and verified in such manner, as the Custodian may from time to time require.

(2) Every such person and every person who holds or manages any property, right or interest vested in the Custodian by any order heretofore made by any Court shall do all such acts, make all such payments and execute and deliver all such conveyances, transfers and other documents for giving effect to the provisions of this Part or of such order and for completing and perfecting the title vested by this Part or by such order in the Custodian as the Custodian may from time to time require.

(3) Every corporation incorporated by or under the authority of the Parliament of Canada or the legislature of any Province of Canada, shall within three months from the date of this Order, unless it has already done so, notify the Custodian of all shares, stock, debentures, debenture stock or other obligations of the company which are held by or for enemies, and shall furnish to the Custodian all such further information in its possession or power, in such form and verified in such manner, as the Custodian may from time to time require.

37. No person shall or shall attempt to sell, assign, transfer, incumber or otherwise dispose of or deal with any property, right or interest vested in the Custodian except as permitted or directed by the Custodian, and, except as so permitted or directed, no sale, assignment, transfer, incumbrance or other disposition of or dealing with any such property, right or interest shall confer upon the purchaser, assignee, transferee, incumbrancer, or person to whom or in whose favour such property is disposed of or dealt with, any right, title or interest to or in or any remedies in respect of such property.

(2) Any person who knowingly violates any provision of this section shall upon summary conviction be liable to a penalty not exceeding two

thousand dollars or to imprisonment for a term not exceeding six months or to both.

38. No person shall by virtue of any assignment or transfer of any debt or other chose in action, or of any bill of exchange, promissory note, or other obligation, or delivery of any coupon or other security transferable by delivery, made in his favour between six o'clock (eastern standard time) in the afternoon of the fourth day of August, 1914, and the date of this Order by or on behalf of an enemy as defined in paragraphs (a) and (b) of Section 32, whether for valuable consideration or otherwise, have any rights or remedies against any person liable to pay, discharge or satisfy the debt, chose in action, bill of exchange, promissory note, obligation, coupon or security, and no person shall knowingly pay, discharge or satisfy any debt, chose in action, bill of exchange, promissory note, obligation, coupon or security so assigned, transferred or delivered.

(2) This section shall not apply where the person to whom the assignment, transfer or delivery was made or some person deriving title under him or some subsequent holder of the bill of exchange or promissory note proves that the assignment, transfer or delivery, or, in the case of a bill of exchange or promissory note, some subsequent transfer, was made by leave of some competent authority in Canada or was made in good faith and for valuable consideration before the sixth day of May, 1916, but nothing in this section shall be construed as validating any assignment, transfer or delivery which would be invalid apart from this section or as applying to securities within the meaning of Section 39.

39. No transfer, whether for valuable consideration or not, made after the sixth day of May, 1916, without the leave of some competent authority in Canada, by or on behalf of an enemy as defined in paragraphs (a) and (b) of Section 32 of any securities shall confer on the transferee any rights or remedies in respect thereof and no company or municipality or other body by whom the securities were issued or are managed shall take any cognizance of or otherwise act upon any notice of such transfer.

40. Where any property, right or interest vested in the Custodian or the title to or any record of such property, right or interest is registered, recorded or entered in any public book or in any book kept for that purpose by any public or private corporation, the Custodian may deliver to the person in charge of such public book or to the proper officer of such corporation a certificate that such property, right or interest is vested in the Custodian, and the certificate shall be entered in the book, and thereafter no entry concerning such property, right or interest shall be made in such book except by permission or direction of the Custodian, and such entries shall be made therein as may be directed by the Custodian in all respects as though the Custodian were registered, recorded or entered as the owner of such property, right or interest, notwithstanding any law, by-law, regulation or article, and notwithstanding that the Custodian is not in possession of any certificate, scrip, pass book or other document of title relating to such property, right or interest.

(2) No action or other proceeding in any Court shall be brought or taken against any person in respect of any such entry made upon the direction of the Custodian.

41. The Custodian may bring or take any action or other proceeding which he may think proper to enforce the provisions of this Order, and to get in any property, right or interest vested in him.

(2) In case of dispute or question whether any property, right or interest belonged on the tenth day of January, 1920, or theretofore to an enemy, the Custodian or, with the consent of the Custodian, the claimant may proceed in the Exchequer Court of Canada for a declaration as to the ownership thereof, notwithstanding that the property, right or interest has been vested in the Custodian by an order heretofore made, or that the Custodian has disposed or agreed to dispose thereof. The consent of the Custodian to proceedings by a claimant shall be in writing and may be subject to such terms and conditions as the Custodian thinks proper.

(3) If the Exchequer Court declares that the property, right or interest did not belong to an enemy as in the last preceding subsection mentioned, the Custodian shall relinquish the same, or, if the Custodian has before such declaration disposed or agreed to dispose of the property, right or interest, he shall relinquish the proceeds of such disposition.

(4) No such declaration shall affect the title or right of any person to whom the Custodian has before such declaration disposed or agreed to dispose of any property, right or interest.

42. Any conveyance, transfer, assignment or delivery of any property, right or interest heretofore or hereafter made to and accepted by or made upon the direction of the Custodian shall discharge the person making the same from all obligations and liabilities in respect of such property, right or interest.

43. The Custodian may do all such acts and things and execute all such documents and make out of any money in his possession or control as Custodian all such payments as he may deem necessary for the conservation and management of, or proper to be made in respect of any property, right or interest vested in him, and may exercise all rights which are or may become appurtenant to or exercisable in respect of any such property, right or interest.

44. The Custodian shall not be liable for any tax, assessment, mortgage, lien, charge, call, rent, interest or payment upon or in respect of any property, right or interest vested in him.

45. No property, right or interest vested in the Custodian shall be forfeited for default in doing any act or making any payment in respect thereof, or attached, seized or taken under any legal process or any distress or foreclosed or sold under any mortgage, lien, pledge or charge, or sold for any tax or assessment.

46. The Custodian may at any time, at his discretion and by such notice, conveyance, transfer or release as he may think proper, relinquish

any property, right or interest or the proceeds of the liquidation of any property, right or interest.

47. The Custodian may dispose of any property, right or interest at such time and place and to such person or persons and upon such terms and in such manner whether publicly or privately as he in his discretion shall think proper.

48. Any transfer by the Custodian of any property, right or interest shall unless the contrary is therein expressed be conclusive evidence in favour of the transferee of the right and power of the Custodian to transfer such property, right or interest to him.

49. The Custodian shall credit to Germany through the Clearing Office established under Part I of this Order all money heretofore belonging to enemies and in his possession or control at the date of this Order and the net proceeds of the sale of any property, right or interest vested in him, and shall deal in accordance with the Treaty with any credit balance in favour of Germany resulting from such credits or from the operations of the Clearing Office under Part I of this Order, and with any money paid to the Custodian under Section 10 or 11 for which no claim is made through the German Clearing Office, or which is not credited to the German Clearing Office.

(2) "Net proceeds" in sub-section (1) shall mean the proceeds after deducting the costs of getting in, retention, management and sale of the property, right or interest and any payments made by the Custodian in respect thereof either under the Consolidated Orders respecting Trading with the Enemy, 1916, or under this Order.

50. Any person who knowingly violates or fails to comply with any provision of Sections 36, 38, 39 and 40 shall on summary conviction be liable to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both.

PART III.

CONTRACTS, PRESCRIPTIONS, JUDGMENTS.

1. GENERAL PROVISIONS.

51. In this Part parties to a contract shall be regarded as enemies when trading between them has during the war been prohibited by, or has otherwise become unlawful under, laws, orders or regulations to which any one of them was subject, and they shall be deemed to have become enemies from the date when such trading was prohibited or otherwise became unlawful.

52. This Part shall not apply to contracts the parties to which became enemies by reason of one of them being an inhabitant of territory of which the sovereignty has been transferred, if such party has acquired or shall acquire under the Treaty the nationality of a Power allied or associated during the war with His Majesty, nor shall it apply to contracts all the parties to which are British subjects or nationals of Powers allied or associated during the war with His Majesty between any two or more of whom trading has been prohibited by reason of one or more of them being in territory of any such allied or associated Power in the occupation of an enemy Power, but nothing in this section shall be construed as validating or continuing any contract which would have been regarded as dissolved if this Part had not been passed.

53. Any contract between enemies shall be regarded as having been dissolved as from the time when any two of the parties became enemies, except in respect of any debt or other pecuniary obligation arising out of any act done or money paid thereunder, and subject to the exceptions and special rules with regard to particular contracts or classes of contracts contained in this Order.

(2) Any contract of which the execution is required within six months from the tenth day of January, 1920, by the Governor in Council, in the general interest, shall be excepted from dissolution under this section.

(3) Nothing in this Part shall be deemed to invalidate a transaction lawfully carried out in accordance with a contract between enemies if it has been carried out with the authority of one of the belligerent Powers.

54. All periods of prescription or limitation of right of action, whether they began to run before or after the outbreak of war, shall be treated in Canada, so far as regards relations between enemies as having been suspended during the war. They shall begin or begin again to run on the first day of July, 1920, except that as regards any negotiable instrument they shall begin or begin again to run six months from the date on which all exceptional regulations affecting the right of recovery on such negotiable instrument shall have definitely ceased to have force.

(2) This section shall apply to the period prescribed for the presentation of interest or dividend coupons or for the presentation for repayment of securities drawn for repayment or repayable on any other ground.

55. The presentation of a claim to the Clearing Office as provided by Part I of this Order or to the German Clearing Office shall suspend the operation of any period of prescription in respect of such claim.

2. SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF CONTRACTS.

CONTRACTS NOT DISSOLVED.

57. The following classes of contracts are excepted from dissolution by this Part and remain in force subject to the application of Canadian laws, orders or regulations made during the war and subject to the terms of the contracts:—

- (a) Contracts having for their object the transfer of estates or of real or personal property where the property therein had passed or the object had been delivered before any party thereto became an enemy;
- (b) Leases and agreements for leases of land and houses;
- (c) Contracts of mortgage, pledge or lien;
- (d) Concessions concerning mines, quarries or deposits;
- (e) Contracts between individuals or companies and States, provinces, municipalities, or other similar juridical persons charged with administrative functions, and concessions granted by States, provinces, municipalities, or other similar juridical persons charged with administrative functions.

57. If the provisions of a contract are in part dissolved under this Part the remaining provisions of that contract shall, subject to the same application of Canadian laws as is provided for in the last preceding section, continue in force if they are severable, but where they are not severable the contract shall be deemed to have been dissolved in its entirety.

STOCK EXCHANGE AND COMMERCIAL EXCHANGE CONTRACTS.

58. Rules made during the war by any recognized Exchange or Commercial Association in Canada providing for the closure of contracts entered into before the war by an enemy are hereby confirmed, as also any action taken thereunder; provided,—

- (1) That the contract was expressed to be made subject to the rules of the Exchange or Association in question;
- (2) That the rules applied to all persons concerned;
- (3) That the conditions attaching to the closure were fair and reasonable.

SECURITIES.

59. The sale of a security held for an unpaid debt owing by an enemy shall be deemed to have been valid irrespective of notice to the owner if the creditor acted in good faith and with reasonable care and prudence, and no claim by the debtor on the ground of such sale shall be admitted.

NEGOTIABLE INSTRUMENTS.

60. As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment or to give notice of non-acceptance or non-payment to drawers or indorsers or to protest the instrument, or by reason of failure to complete any formality during the war.

(2) Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or indorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, notice of non-acceptance or non-payment or protest may be made or given on or before the first day of July, 1920.

61. The pecuniary obligations existing between enemies and resulting from the issue of negotiable instruments shall be adjusted in conformity with Part 1 of this Order through the Clearing Office, and the rights of persons residing or carrying on business in Canada who are holders of such instruments as regards the various remedies open to them are hereby conferred upon and vested in the Custodian.

(2) If a person has either before or during the war become liable upon a negotiable instrument in accordance with an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of his liability notwithstanding the outbreak of war.

FIRE INSURANCE.

62. Contracts for the insurance of property against fire entered into by a person interested in such property with another person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy, or on account of the failure during the war and for a period of three months thereafter to perform his obligations under the contract, but they shall be dissolved at the date when the annual premium becomes payable for the first time after the tenth day of April, 1920.

(2) A settlement shall be effected through the Clearing Office of unpaid premiums which became due during the war, or of claims for losses which occurred during the war.

63. Where by administrative or legislative action an insurance against fire effected before the war has been transferred during the war from the original to another insurer, the transfer shall be recognized and the liability of the original insurer shall be deemed to have ceased as from the date of the transfer. The original insurer shall, however, be entitled to receive on demand full information as to the terms of the transfer, and if it should appear that these terms were not equitable they shall be amended by the Exchequer Court of Canada so far as may be necessary to render them equitable.

(2) Furthermore, the insured shall, subject to the concurrence of the original insurer, be entitled to re-transfer the contract to the original insurer as from the date of the demand.

LIFE INSURANCE.

64. Contracts of life insurance entered into between an insurer and a person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy.

(2) Any sum which during the war became due upon a contract deemed not to have been dissolved under subsection (1) shall be recoverable through the Clearing Office with the addition of interest at five per cent per annum from the date of its becoming due up to the day of payment.

(3) Where the contract has lapsed during the war owing to non-payment of premiums, or has become void from breach of the conditions of the contract, the assured or his representatives or the persons entitled shall have the right at any time before the eleventh day of January, 1921, to claim from the insurer through the Clearing Office the surrender value of the policy at the date of its lapse or avoidance.

(4) Where the contract has lapsed during the war owing to non-payment of premiums the payment of which has been prevented by the enforcement of measures of war, the insured or his representative or the persons entitled shall have the right to restore the contract on payment through the Custodian of the premiums with interest at five per cent per annum before the eleventh day of April, 1920.

65. The Governor in Council may, before the eleventh day of April, 1920, cancel all the contracts of insurance running between a German insurance company and British subjects residing in Canada under conditions which shall protect such British subjects from any prejudice.

66. Insurance contracts shall be considered as contracts of life insurance for the purpose of Sections 64 and 65 when they depend on the probabilities of human life combined with the rate of interest for the calculation of the reciprocal engagements between the two parties.

MARINE INSURANCE.

67. Contracts of marine insurance, including time policies and voyage policies entered into between an insurer and a person who subsequently became an enemy, shall be deemed to have been dissolved on his becoming an enemy, except in cases where the risk undertaken in the contract had attached before he became an enemy.

(2) Where the risk had not attached, money paid by way of premium or otherwise shall be recoverable from the insurer through the Clearing Office.

(3) Where the risk had attached effect shall be given to the contract notwithstanding the party becoming an enemy, and sums due under the contract either by way of premiums or in respect of losses shall be recoverable through the Clearing Office.

(4) The interest provided for by section 23 shall in the cases of losses recoverable under contracts of marine insurance run from the expiration of a period of one year from date of the loss.

68. No contract of marine insurance with an insured person who subsequently became an enemy shall be deemed to cover losses due to belligerent action by the Power of which the insurer was a national or by the allies or associates of such Power.

69. Where it is shown that a person who had before the war entered into a contract of marine insurance with an insurer who subsequently became an enemy entered after the outbreak of war into a new contract covering the same risk with an insurer who was not an enemy, the new contract shall be deemed to be substituted for the original contract as from the date when it was entered into and the premiums payable shall be adjusted on the basis of the original insurer having remained liable on the contract only up till the time when the new contract was entered into.

OTHER INSURANCES.

70. Contracts of insurance entered into before the war between an insurer and a person who subsequently became an enemy other than contracts dealt with in sections 62 to 69 shall be treated in all respects on the same footing as contracts of fire insurance between the same persons would be dealt with under the said sections.

RE-INSURANCE.

71. All treaties of re-insurance with a person who became an enemy shall be regarded as having been abrogated by the person becoming an enemy, but without prejudice in the case of life or marine risks which had attached before the war to the right to recover payment after the war for sums due in respect of such risks.

(2) Nevertheless if, owing to invasion, it has been impossible for the re-insured to find another re-insurer, the re-insurance treaty shall remain in force until the eleventh day of April, 1920.

(3) Where a re-insurance treaty becomes void under this section, there shall be an adjustment of accounts between the parties, through the Clearing Office, in respect both of premiums paid and payable and of liabilities for losses in respect of life or marine risks which had attached before the war. In the case of risks other than those mentioned in sections 64 to 69 the adjustment of accounts shall be made as at the date of the parties becoming enemies without regard to claims for losses which may have occurred since that date.

72. The provisions of section 71 shall extend equally to re-insurances existing at the date of the parties becoming enemies of particular risks undertaken by the insurer in a contract of insurance against any risks other than life or marine risks.

73. Re-insurance of life risks effected by particular contracts and not under any general treaty remain in force.

(2) The provisions of section 65 shall apply to treaties of re-insurance of life insurance contracts in which German companies are the re-insurers.

74. In case of a re-insurance effected before the war of a contract of marine insurance, the cession of a risk which had been ceded to the re-insurer shall, if it had attached before the outbreak of war, remain valid and effect be given to the contract notwithstanding the outbreak of war; sums due under the contract of re-insurance in respect either of premiums or of losses shall be recoverable through the Clearing Office.

75. The provisions of sections 68 and 69 and of sub-section 4 of section 67 shall apply to contracts for the re-insurance of marine risks.

PART IV.

INDUSTRIAL PROPERTY.

76. Subject to the provisions of this Order, rights of industrial, literary and artistic property, as such property is defined by the International Convention of Paris of March 20, 1883, for the protection of industrial property, revised at Washington on June 2, 1911, and the International Convention of Berne of September 9, 1886, for the protection of literary and artistic works, revised at Berlin on November 13, 1908, and completed by the additional Protocol signed at Berne on March 20, 1914, shall be re-established or restored, as from the tenth day of January, 1920, in Canada in favour of the persons entitled to the benefit of them immediately before the war, or their legal representatives. Equally, rights which, except for the war, would have been acquired during the war in consequence of an application made for the protection of industrial property, or the publication of a literary or artistic work, shall be recognized and established in favour of those persons who would have been entitled thereto from the tenth day of January, 1920.

(2) Nevertheless, all acts done by virtue of the special measures taken during the war under legislative, executive or administrative authority in Canada in regard to the rights of German nationals in industrial, literary or artistic property shall remain in force and shall continue to maintain their full effect.

77. No claim shall be made or action brought by Germany or German nationals in respect of the use during the war by the Government of Canada, or by any persons acting on behalf or with the assent of such Government of any rights in industrial, literary or artistic property, nor in respect of the sale, offering for sale, or use of any products, articles or apparatus whatsoever to which such rights applied.

78. Sums due or paid in virtue of any act or operation resulting from the execution of the special measures mentioned in sub-section (2) of section 76 shall be dealt with in the same way as other sums due to German nationals are directed to be dealt with by this Order; and sums produced by any special measures taken by the German Government in respect of rights in industrial, literary or artistic property belonging to British subjects residing in Canada shall be considered and treated in the same way as other debts due from German nationals.

79. Any transfer in whole or in part of or other dealing with rights of or in respect of industrial, literary or artistic property effected after the first day of August, 1914, which would have the result of defeating the objects of the provisions of sections 76, 77 and 78 shall be void and of no effect, but the Governor in Council may exempt any such transfer or other dealing from the provisions of this section.

80. The provisions of sections 76 to 79 inclusive shall not apply to rights in industrial, literary or artistic property which have been dealt with in the liquidation of any business or company under Canadian war legislation, or which may be so dealt with by virtue of Part II of this Order.

81. At any time before the eleventh day of January, 1921, any British subject or any national of a Power allied or associated during the war with His Majesty or any German national may without extension fees or other penalty accomplish any act, fulfil any formality, pay any fees, and generally satisfy any obligation prescribed by the laws or regulations of Canada relating to the obtaining, preserving or opposing rights to or in respect of industrial property either acquired before the first day of August, 1914, or which, except for the war, might have been acquired since that date as a result of an application made before or during the war.

(2) All rights to, or in respect of, such property which may have lapsed by reason of any failure to accomplish any act, fulfil any formality, or make any payment, shall revive, but subject in the case of patents and designs to the imposition of such conditions as the Governor in Council may deem reasonably necessary for the protection of persons who have manufactured or made use of the subject matter of such property while the rights had lapsed. Further, where rights to patents or designs belonging to German nationals are revived under this Order, they shall be subject in respect of the grant of licenses to the same provisions as would have been applicable to them during the war, as well as to all the provisions of this Order.

82. The period from the first day of August, 1914, until the tenth day of January, 1920, shall be excluded in considering the time within which a patent should be worked or a trade mark or design used, and no patent, registered trade mark or design in force on the first day of August, 1914, shall be subject to revocation or cancellation by reason only of the failure to work such patent or use such trade mark or design for two years after the tenth day of January, 1920.

83. The rights of priority, provided by Article 4 of the International Convention of Paris for the Protection of Industrial Property, of March 20, 1883, revised at Washington in 1911, or by any other Convention or Statute, for the filing or registration of applications for patents or models of utility, and for the registration of trade marks, designs and models which had not expired on the first day of August, 1914, and those which have arisen during the war, or would have arisen but for the war, shall be extended in favour of all nationals of Germany, and of the Powers allied or associated during the war with His Majesty, until the eleventh day of July, 1920.

Provided, however, that such extension shall in no way affect the right of Germany or of any of the Powers allied or associated during the war with His Majesty or of any person who before the tenth day of January, 1920, was bona fide in possession of any rights of industrial property conflicting

with rights applied for by another who claims rights of priority in respect of them, to exercise such rights by itself or himself personally, or by such agents or licensees as derived their rights from it or him before the tenth day of January, 1920; and such persons shall not be amenable to any action or other process of law in respect of infringement.

84. No action shall be brought and no claim made by persons residing or carrying on business within the territories of Germany or nationals of Germany on the one part and persons residing or carrying on business in Canada on the other, or by any one deriving title during the war from such persons, by reason of any action which has taken place within the territory of the other party during the war, which might constitute an infringement of the rights of industrial property or rights of literary and artistic property, either existing during the war or revived under the provisions of Sections 81, 82 and 83.

(2) No action for infringement of industrial, literary or artistic property rights by such persons shall at any time be permissible in respect of the sale or offering for sale for a period of one year after the tenth day of January, 1920, in the territory of Canada on the one hand or Germany on the other, of products or articles manufactured, or of literary or artistic works published, during the war, or against those who have acquired and continue to use them, but this sub-section shall not apply when the possessor of the rights was domiciled or had an industrial or commercial establishment in the districts occupied by Germany during the war.

85. Licenses in respect of industrial, literary or artistic property concluded before the war between persons residing or carrying on business in Canada on the one part, and enemies as defined in Section 32 on the other part, shall be considered as cancelled as from the fourth day of August, 1914. Provided, however, that the former beneficiary of a contract of this kind shall have the right, within a period of six months from the tenth day of January, 1920, to demand from the proprietor of the rights the grant of a new license, the conditions of which, in default of agreement between the parties, shall be fixed by the Minister of Trade and Commerce, except in the case of licenses held in respect of rights acquired under German law. In such cases the conditions shall be fixed by the Mixed Arbitral Tribunal referred to in Section VI of Part X of the Treaty. The Minister of Trade and Commerce or the Mixed Arbitral Tribunal may, if necessary, fix also the amount which he or it may deem justly payable by reason of the use of the rights during the war.

86. No license in respect of industrial, literary or artistic property, granted under the special war legislation of Canada, shall be affected by the continued existence of any license entered into before the war, but shall remain valid and of full effect, and a license so granted to the former beneficiary of a license entered into before the war shall be considered as substituted for such license.

87. Where sums have been paid during the war by virtue of a license or agreement concluded before the war in respect of rights of industrial

property or for the reproduction or the representation of literary, dramatic or artistic works, these sums shall be dealt with in the same manner as other debts or credits of German nationals, as provided by this Order.

88. Notwithstanding the provisions of Part II of this Order, where immediately before the war a company incorporated in Canada -or incorporated in any of His Majesty's Dominions or under the laws of a Power allied or associated during the war with His Majesty and carrying on business in Canada had rights, in common with a company controlled by it and incorporated in Germany, to the use of trade marks in any third country, or enjoyed the use in common with such company of unique means of reproduction of goods or articles for sale in any third country, the former company shall alone have the right to use these trade marks to the exclusion of the German company, and these unique means of reproduction shall be handed over to the former company, notwithstanding any action taken under German war legislation with regard to the latter company or its business, industrial property or shares; but nevertheless the former company shall if requested deliver to the German company derivative copies of these unique means of reproduction of articles for use within Germany territory.

PART V.

GENERAL.

89. All moneys heretofore or hereafter received by the Custodian shall be deposited with the Receiver General of Canada and shall be paid out on the order of the Secretary of State, as provided by this Order.

90. Every document purporting to be an order, certificate or other instrument issued by the Clearing Office or by the Custodian and signed by the Custodian or other person authorized by the Custodian shall without further proof, unless the contrary is shown, be deemed for all purposes, including its receipt in evidence, to be such order, certificate or other instrument.

91. Any power or duty conferred or imposed by this Order upon the Custodian or the Clearing Office may be delegated by the Custodian to such person or persons as he may think proper.

92. The Consolidated Orders respecting Trading with the Enemy, 1916, and all amendments thereto, and the Order in Council dated the 11th of November, 1918, appointing an Enemy Debts Committee, and the Order in Council dated the 20th of December, 1919, dealing with the release and transfer by the Custodian of property vested in him, so far as the said Orders affect Germany or German nationals, or the property, rights or interests of German nationals, are hereby repealed. *Amended by P.C. 879.*

RODOLPHE BOUDREAU,

Clerk of the Privy Council.



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